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a Nevada Limited Partnership

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BROOKMEAD PARTNERS LP, a Nevada Limited Partnership, Plaintiff, v. Interinsurance Exchange of the Automobile Club, a California business entity, Saracia L.P. Shannahan, and William P. Shannahan, Higgs, Fletcher & Mack, LLP, a California business entity, Defendants.	)))))))))))))	**Case No.** 08 CV-659-JLS (WMC) FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF

I. INTRODUCTION

1. This action is brought under the Declaratory Judgment Act (28 U.S.C. § 2201) and seeks a judicial determination of rights and obligations of the parties hereto under that certain policy of homeowners insurance issued by defendant Interinsurance Exchange of the Automobile Association, specifically identified as Homeowner's Policy Number CHO 003045070, for the policy period from "11-12-2007" to "11-12-2008", hereinafter referred to as the "Homeowner's Policy", and a judicial declaration that plaintiff, as the true legal and equitable owner of the real property and the insurable interest with respect thereto under the Homeowner's Policy, is entitled to the

payment of the covered loss under Coverage A and Coverage B thereof.

II. PARTIES

2. Plaintiff, Brookmead Partners L.P., is a Nevada Limited Partnership with its principal place of business in Carson City, Nevada.

3. Plaintiff is informed and believes and thereupon alleges that Defendant Interinsurance Exchange of the Automobile Club, hereinafter referred to as "AAA", is a business entity of a form presently unknown to plaintiff, and is sued herein under the name by which it is known, but is duly organized and existing under the laws of the State of California, and duly licensed by the Insurance Commissioner of the State of California to engage in the business of issuing policies of homeowners insurance, and is doing business in San Diego County, California, and within the judicial district of this Court.

4. Defendant Saracia L.P. Shannahan is a resident of La Jolla, San Diego County, California.

5. Defendant William P. Shannahan is a resident of La Jolla, San Diego County, California.

6. Plaintiff is informed and believes and thereupon alleges that defendant Higgs, Fletcher & Mack, LLP, is a professional limited liability partnership, duly licensed to practice and engaged in the practice of law in the State of California, and doing business in San Diego County, California, and within the judicial district of this Court.

III. JURISDICTION AND VENUE

7. This Court has both subject matter jurisdiction and personal jurisdiction over the parties pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 1332(a), and the amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. §1332. Venue lies in this district under 28 U.S.C. § 1391(a) in that the individual defendants reside in this district.

IV. FACTS

8. Northwest Financial Ltd., a Nevada limited partnership, purchased real estate in La

Jolla, California known as 2677 Brookmead Lane, La Jolla, California, on November 30, 1987, from an unrelated seller known as Wilbur Breckenridge.

9. On November 30, 1987, Northwest Financial Ltd. as Vendor entered into a land contract with William P. Shannahan as the Trustee of the Shannahan Marital Trust UTA April 28,1987, as Vendee. Legal title was retained by Northwest Financial Inc., a Nevada Corporation and general partner of Northwest Financial Ltd. as security under the land contract.

10. Shannahan Marital Trust was acting as Trustee for Saracia L.P. Shannahan, a married woman as her sole and separate property as to an undivided twenty-five (25%) interest, William P. Shannahan, a married man as his sole and separate property as to an undivided twenty-five (25%) interest and Shannahan Investments Inc, a Nevada Corporation, Successor to Shannahan Investments Inc., a California Corporation, the separate property of William P. Shannahan as to an undivided fifty (50%) percent interest.

11. The land contract of November 30, 1987 was amended several times and the final and fourth amendment was executed effective January 1, 2003.

12. Defendants William P. Shannahan and Saracia L.P. Shannahan applied to AAA for and received property insurance coverage commonly referred to as the "Homeowner's Policy."

13. William P. Shannahan and Saracia L.P. Shannahan and their minor daughter moved into the Brookmead residence on March 18, 1988 and resided there as their principal residence until June 28, 2004, when Defendant Saracia L.P. Shannahan moved out of the residence pursuant to Court order. Defendant William P. Shannahan and his minor son continued to reside in the Brookmead residence until December 15, 2007, when the Brookmead residence was lost to fire.

14. On or about January 1, 2003, Defendants William P. Shannahan and Saracia L.P. Shannahan as Trustees of the Shannahan Marital Trust transferred all of its right title and interest in the the Vendee interest in the land contract held for the benefit of Saracia L.P. Shannahan, William P. Shannahan and Shannahan Investments Inc. to Brookmead Partners, a California General Partnership, and Plaintiff is informed and believes and thereupon alleges such transfer to include

any and all interest to receive the benefits of Coverage A and Coverage B under the Homeowner's Policy with AAA.

15. On or about May 1, 2003, Northwest Financial Ltd. and BLLJ, a Nevada Limited Partnership contributed their creditor Vendor interests in the land contract as capital contributions to Brookmead Partners.

16. On or about January 1, 2004, Defendants William P. Shannahan and Saracia L.P. Shannahan as Trustees and BLLJ made additional capital contributions to Brookmead Partners. On April 20, 2004, Defendant Saracia L.P. Shannahan filed a Petition For Dissolution in the Superior Court of San Diego County, California resulting in an Order prohibiting Defendant William P. Shannahan from taking any action concerning community and separate property assets including the

ability to change the Homeowner's Policy with AAA.

17. On or about April 24, 2004, Defendant William P. Shannahan revoked the Shannahan Marital Trust and distributed the interest held for Saracia L.P. Shannahan, William P. Shannahan and Shannahan Investments Inc. to each of them.

18. On or about September 28, 2007, the Partners of Brookmead Partners holding more than eighty-eight (88%) percent of Brookmead Partners agreed to convert Brookmead Partners into a Nevada Limited Partnership for valid business reasons.

19. On November 12, 2007, AAA reissued its policy of Homeowner’s coverage with Coverage A Dwelling in the amount of $892,000.000, Coverage B – Other Structures in the amount of $120,932.60, Coverage C – Contents in the amount of $669,000.00 and Loss of Use of $178,400.00.

20. On October 29, 2007 the San Diego Superior Court Family Law Division in Docket #D483710 issued a Proposed Statement of Decision holding that the Brookmead property is “currently owned by legal entities which were not joined in this action…” which finding was made after trial and *before* the December 15, 2007 fire loss hereinafter alleged.

21. On March 21, 2008, the San Diego Superior Court Family Law Division in Docket #D483710 issued a Final Statement of Decision again holding that the Brookmead property is "currently owned by legal entities which were not joined in the action…" which finding was made after trial and *after* the December 15, 2007 fire loss hereinafter alleged..

22. Plaintiff is informed and believes and thereupon alleges that Defendants William P. Shannahan and Saracia L.P. Shannahan are both estopped from claiming any ownership interest in the Brookmead property for Coverage A and Coverage B purposes, and have no insurable interest thereunder.

23. Plaintiff is informed and believes and thereupon alleges that Defendant Saracia L.P. Shannahan has received, or will receive a money judgment in the San Diego Superior Court Family Law Division in Docket #D483710 in her favor and against Defendant William P. Shannahan in an amount in excess of $2,000,000.00 representing, *inter alia*, whatever interest she may have had in the Brookmead property, and that by reason thereof Defendant Saracia L.P. Shannahan has no interest on Coverage A and Coverage B of the Homeowner's Policy

24. Defendant William P. Shannahan admits that he has no interest on Coverage A and Coverage B of the Homeowner's Policy.

25. Plaintiff is the owner of the Brookmead property and is the owner of the insurable interest under Coverage A and Coverage B of the Homeowner's Policy.

26. On December 15, 2007 the Brookmead residence was engulfed in flames and subsequently declared a total loss by AAA.

27. On March 25, 2008, AAA issued its check in the amount of $957,525.23 and on April 1, 2008, transmitted that check to Defendant William P. Shannahan explaining that the check represented the payment on Coverage A and Coverage B of the Homeowner's Policy.

28. On April 4, 2008, Defendant William P. Shannahan acknowledged the ownership of such funds in the Plaintiff and attempted to deposit the funds in Plaintiff's bank account but AAA,

at the unlawful, improper and illegal interference of Defendant Saracia L.P. Shannahan, illegally issued a stop payment order on the funds.

29. Plaintiff is informed and believes and thereupon alleges that on or about May 27, 2008, AAA, with actually knowledge of the pendency of this federal declaratory relief action and having accepted service of process herein, voluntarily issued its check in the amount of $957,525.23 purporting it to be payment of Coverage A and Coverage B of the Homeowner's Policy, and delivered the same of Defendant Higgs, Fletcher & Mack, LLP.

30. Plaintiff is informed and believes and thereupon alleges that on or about May 27, 2008, Defendant Higgs, Fletcher & Mack, LLP, with actual knowledge of the pendency of this federal declaratory relief action, did receive and has deposited Defendant AAA's check in the amount of $957,525.23, and is now in actual possession of the funds representing the payment thereof.

V. CAUSE OF ACTION

(Declaratory Relief Against All Defendants)

31. Plaintiff incorporates and realleges paragraphs 1 through 30, inclusive, above.

32. An actual controversy now exists between Plaintiff and Defendants over the ownership and right to the Coverage A and Coverage B funds in that Plaintiff is the rightful owner of the insurable interest under Coverage A and Coverage B of the Homeowner's Policy, and is rightfully entitled to the funds paid under Coverage A and Coverage B thereof, and that AAA is obligated to pay the Coverage A and Coverage B funds to Plaintiff, whereas, Plaintiff is informed and believes and thereupon alleges that (a) Defendant Saracia L. P. Shannahan claims an interest therein and threatens to bring suit if such payment is made by AAA; (b) AAA claims that it is discharged from its obligation of making payment to Plaintiff by paying the sum of $957,525.23 to Defendant Higgs, Fletcher & Mack, LLP; and (3) Defendant Higgs, Fletcher & Mack, LLP, while acknowledging possession of said funds, claim no interest therein.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. A judicial declaration that:

a. Plaintiff is the insured under AAA’s Homeowner’s Policy coverage for Coverage A and Coverage B.

b. Plaintiff is entitled to the sum of $957,525.23 and such other sums as the insured under the Homeowner's Policy Coverage A and/or Coverage B, and that AA is obligation to make payment of all sums due under the Homeowner's Policy Coverage A and/or Coverage B to Plaintiff.

d. Defendants William P. Shannahan and Saracia L.P. Shannahan are not insured under Coverage A and Coverage B of the Homeowner's Policy, and have no claim or interest to any proceeds under Coverage A and Coverage B thereof.

e. Defendant Higgs, Fletcher & Mack, LLP, has no claim or interest to any of the proceeds under Coverage A and Coverage B of the Homeowner's Policy.

2. Plaintiff is awarded attorney fees and costs against Defendant Saracia L.P. Shannahan.

3. Such other and further relief as the Court deems just and proper.

Dated: May 29, 2008

s/Darvy Mack Cohan
DARVY MACK COHAN
Attorney for Brookmead Partners LP,
a Nevada Limited Partnership